



## MONTANA STATE PRISON HEALTH SERVICES OPERATIONAL PROCEDURE

Procedure No.: MSP HS I-02.0	Subject: <b>INVOLUNTARY PSYCHOTROPIC MEDICATIONS</b>
Reference: DOC Policy 4.5.29	Page 1 of 4 and no attachments
Effective Date: April 30, 2013	Revised: June 1, 2017
Signature / Title: /s/ Tricia Ayers-Weiss / CSD Mental Health Bureau Chief	

### **I. Purpose:**

To establish procedures for the involuntary administration of psychotropic medications. These procedures are modeled after Harper v. State of Washington, and only apply to non-emergency situations where psychotropic medications may be utilized to involuntarily treat inmates. It applies to all staff involved in the process of assessing the need for and administration of these medications.

The Department of Corrections requires three conditions to be identified to justify the use of involuntary psychotropic medications:

1. the inmate suffers from a mental illness or mental disorder;
2. the medication is in the best medical interest of the inmate; and
3. the inmate is either gravely disabled or poses a likelihood of serious harm to self or others.

### **II. Definitions:**

Gravely Disabled - the inmate, as a result of a mental disorder, is in danger of serious physical harm resulting from the failure to provide for his essential human needs of health or safety or manifesting severe deterioration in routine functioning, evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health and safety.

Health Care Professional - licensed Physician, Physician's Assistant, Nurse Practitioner, or Registered Nurse.

Lay Advisor - an individual appointed by the Mental Health Services Manager who can advocate for the inmate in the presentation of his arguments and who can understand and represent the inmate's rights and interests during the Involuntary Psychotropic Medication Hearing proceedings. The lay advisor should have an understanding of mental health issues but should not be involved in the inmate's treatment.

Mental Disorder – As defined by 53-21-102, MCA, any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. As defined by DSM-V, a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning which causes distress or disability in social, occupational, or other important activities.

Mental Health Professional - this includes the positions of Psychiatrist, Psychologist, Psychiatric Nurse, Social Worker, and other persons with Masters Degree or a further advanced degree in counseling or social sciences, who are licensed by the State of Montana.

Treatment Review Committee - a committee comprised of two members appointed by the Mental Health Services Manager or designee to conduct Involuntary Psychotropic Medication Hearings. Both committee members will be mental health professionals, one member must be a psychiatrist or a physician with mental health experience, and both members must not be involved in the inmate's current

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treatment. The psychiatrist or physician will serve as chairperson of the committee. The Treatment Review Committee has the authority to: 1) authorize the use of involuntary medications requested by the treating practitioner, and 2) to determine whether or not involuntary medications may be continued.

### III. Procedures

#### A. General Requirements

1. Criteria for administration of involuntary psychotropic medications:  
For involuntary medication to be approved, the treating psychiatrist, or in the absence of the psychiatrist, a physician with mental health experience has determined that:
  - a. the inmate suffers from a mental disorder;
  - b. the medication is in the best interest of the inmate; and
  - c. the inmate is either gravely disabled or poses a likelihood of serious harm to himself or others.

Prior approval or a hearing will not be required when the medication is administered in an emergency situation (*see HS I-02.1, Emergency Medications*).
2. Involuntary Medication Hearing process (for controlled involuntary medication of the inmate):
  - a. when the treating psychiatrist/physician requests the administration of an involuntary medication s/he will prepare a complete evaluation, which documents the facts and underlying reasons supporting the decision as well as the inmate's mental condition for the Treatment Review Committee. This is to include, but not limited to:
    - 1) the DSM-IV diagnosis;
    - 2) indications from the medical record or direct observation that the inmate is either gravely disabled or poses a likelihood of serious harm to self or others;
    - 3) methods used to motivate the inmate to accept medications voluntarily and the inmate response to these efforts; and
    - 4) also to be included would be the patients expected prognosis and behavior on and off of medications.
  - b. The inmate must receive a *Notice of Hearing for Involuntary Medication form* (see attachment B) that involuntary medication is being considered. The notice must include:
    - 1) date and time the Involuntary Medication Hearing will be held;
    - 2) the provisional diagnosis;
    - 3) data which reflects the factual basis for such a diagnosis; and
    - 4) the basis on which it has been determined that there is medical necessity for involuntary treatment.
  - c. Inmate rights at the Involuntary Medication Hearing:
    - 1) the inmate has an opportunity to be present and to be heard in person at the hearing and to present documentary evidence on his behalf;
    - 2) the inmate may have a lay advisor to advise him during the hearing process. The lay advisor will meet with the inmate prior to the hearing to discuss procedures and mental health issues involved. The lay advisor will document the interaction with the inmate on a SOAP or DAP note;
    - 3) at the hearing, the treating psychiatrist/physician is obligated to disclose to the inmate the evidence used for the proposed involuntary treatment;

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- 4) the inmate has a limited right to present testimony through his own witnesses and to cross-examine witnesses that are called by the treating psychiatrist/physician and witnesses provided by mental health staff;
  - 5) when Montana State Prison staff members are called as witnesses by the Treatment Review Committee, every effort will be made to have such witnesses present to testify at the hearing. Written statements of such staff members may be considered in their absence; and
  - 6) the Chair of the Involuntary Medication Hearing will document reasons for not allowing an inmate to present or cross examine a witness orally at the hearing and in writing as part of the final decision. Reasons for not allowing an inmate to present witnesses or to cross examine witnesses include, but are not limited to, irrelevance, lack of necessity, redundancy, possible reprisals, or other reasons related to institutional interests of security and order.
- d. Treatment Review Committee process and hearing:
- 1) the Treatment Review Committee will base its decision upon the treating psychiatrist/physician's recommendation and report, information provided by other mental health professionals and involved staff members, a review of the inmates' health record, and a face to face interview/evaluation of the inmate;
  - 2) the committee chairperson will document the findings of the hearing on a *Treatment Review Committee Documentation Form (attachment A)*. This includes the following:
    - a) documentation will include the evidence relied upon and rationale for the committee's final decision;
    - b) the *Treatment Review Committee Documentation Form* will be immediately submitted in a hard copy report to the Warden;
    - c) if the Warden is in agreement with the decision he/she will sign the report and return a signed copy to the Treatment Review Committee;
    - d) if the Warden is in disagreement with the decision, then s/he will return it to the Treatment Review Committee chairperson to determine if further action is warranted based upon the Warden's concerns; and
    - e) the chairperson may choose to table the request for involuntary medication, request further evidence, or conduct another hearing.
  - 3) Following the hearing, the inmate may receive involuntary medications based upon the Treatment Review Committee recommendations, pending final disposition of a written decision from the chairperson and the Warden;
  - 4) the inmate will be given a copy of the *Treatment Review Committee Documentation Form* within seven days. Copies will also be placed in the mental health and medical files;
  - 5) treatment reviews will only be done if the inmate requests a review in writing. Reviews can be requested by the inmate after one year following the initial hearing and once per year thereafter. The Treatment Review Committee will conduct a review in accordance with committee procedures. If the inmate does not request a review, the administration of involuntary medicines is in effect indefinitely without further action from the committee;
  - 6) in the event that the inmate agrees to voluntarily submit to treatment following a positive committee decision for involuntary medicine, involuntary procedures can be suspended. However, the order remains in effect and the treating psychiatrist can resume involuntary procedures as necessary, depending on the inmate's compliance with treatment; and

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- 7) per *MSP 3.1.8, Use of Force and Restraints* both force and restraints may be utilized in the administration of involuntary medication.
- e. Once the Treatment Review Committee has made the decision to authorize involuntary treatment with psychotropic medications, the treating psychiatrist will have the responsibility to:
  - 1) order medications according to the accepted medical standard of care in the community;
  - 2) order any necessary laboratory tests or other procedures to monitor prescribed medications; and
  - 3) temporarily discontinue the involuntary medications as a result of the following (this may be done without affecting the involuntary status of the patient):
    - a) excessive side effects, or medical problems suspected to be due to medications; or
    - b) toxic levels of the medications in the inmate's blood.
3. Inmate appeal process is as follows:
  - a. the inmate will be permitted to submit a written appeal concerning the decision of the Involuntary Medication Hearing to the Mental Health Services Manager. The appeal must be submitted within seven days from his receipt of the committee's decision;
  - b. the Mental Health Services Manager will serve as the Department's designee for the Department of Corrections, and will review all appeals concerning involuntary medication to determine if all procedures were followed;
  - c. the Mental Health Services Manager will take action within five days of receipt of the appeal, exclusive of holidays or weekends; and
  - d. this procedure will be reviewed annually by the Mental Health Services Manager.

#### **IV. Attachments:**

Treatment Review Documentation form	attachment A
Notice of Hearing for Involuntary Medication form	attachment B

#### **V. References:**

NCCHC Standard P-I-02, 2014  
 NCCHC Standard: M-I-02 (Emergency Psychotropic Medication), 2015

**Forced Psychiatric Medication Hearing**  
**Treatment Review Committee Documentation Form**

**Inmate Name:** \_\_\_\_\_

**AO#** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Committee Members Present for Hearing:** \_\_\_\_\_  
\_\_\_\_\_

**Treating Psychiatrist:** \_\_\_\_\_

**Lay Advisor:** \_\_\_\_\_

**Other staff members present:** \_\_\_\_\_  
\_\_\_\_\_

**Hearing Notes/Subjective and Objective Observations:**

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**Committee Findings:**

All three of the below criteria must be met in order to approve forced medicines:

1. Does the inmate suffer from a mental illness or mental disorder?  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Is the inmate a danger to self or others or gravely disabled?  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. Is medication in the best medical interest of the inmate?  
Yes \_\_\_\_\_ No \_\_\_\_\_

Inmate Name and AO# \_\_\_\_\_

## Should psychiatric medicines be administered involuntarily?

Yes \_\_\_\_\_ No \_\_\_\_\_

### **Summary of Treatment Committee Findings:**

[illegible]

**Signature:**

Treatment Review Committee Chairman

Date \_\_\_\_\_

**Warden's Comments:**

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Warden's Signature

Date \_\_\_\_\_

## **NOTICE OF HEARING FOR INVOLUNTARY MEDICATIONS**

**To: (Inmate's Name)**  
**AO#**

The Montana State Prison Treatment Review Committee will be reviewing your case for possible treatment with involuntary medications. This letter is intended to inform you in writing of the scheduled hearing and your rights at that hearing.

**The hearing will tentatively be held on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ at \_\_\_\_ to consider the administration of involuntary medicines for the diagnosis of**

**“(state the diagnosis).” This diagnosis is based on your history of (example: delusions, paranoia, loss of touch with reality, pressured speech, confused thinking and dangerous behaviors that are a direct result of your mental illness).**

It is believed that involuntary treatment is necessary due to your continued noncompliance with recommended treatment, and your high risk for (example: assaulting other inmates or staff) as the result of your mental illness.

### ***Rights***

You have the right to be present and to be heard in person at the hearing and to present evidence on your behalf

You have the right to hear evidence that is being relied upon in the consideration of involuntary treatment

You have a limited right to present testimony through your own witnesses and to cross-examine witnesses called by Montana State Prison

You have the right to have a Lay Advisor appointed by the Mental Health Director to advise you during the hearing process.

If involuntary medicines are approved, you have the right to request another hearing on this matter every 6 months.

\_\_\_\_\_  
Chairperson, Treatment Review Committee

\_\_\_\_ / \_\_\_\_ / \_\_\_\_  
Date: